

THE WORLD TRADE ORGANIZATION 'MILLENNIUM BUG'

Transnational corporations are using global power blocs and the WTO's dispute system in their attempts to control the resources and economies of developing countries.

Part 1 of 2

**by Corporate Europe
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TRANSNATIONAL CONTROL OVER GLOBAL TRADE POLITICS

The World Trade Organization (WTO), in the first four years of its existence, has built up a dark environmental and social record. Large transnational corporations (TNCs) have been the satisfied beneficiaries of its treaties, while communities and small farmers around the world have suffered from WTO-promoted 'free trade'. This outcome is hardly surprising, as corporate lobby groups have been closely involved in the shaping of many of the WTO agreements.

The WTO's model of economic development is increasingly identified as being incompatible with ecological sustainability. In its rulings in trade disputes on bananas, beef hormones and numerous other products, the WTO has put trade above all else, overruling environmental, social, consumer and health considerations.

Despite the increasing backlash against the WTO and its treaties, the European Commission (EC) hopes to expand further the scope of the body's mandate, as well as its power, through the proposed WTO Millennium Round (which would start in November at the WTO Ministerial Conference in Seattle, USA). Armed with its newly adopted rhetoric to win over NGOs, the European Union (EU) continues to fashion its international trade policies around the economic interests of European-based corporations. In its campaign for the Millennium Round, the Commission has been freshening up its connections with European industry and encouraging corporate networks to provide input towards EU negotiating positions. This symbiotic relationship, which was solidified during negotiations on the WTO Financial Services Agreement in 1997, has now been complemented with a far vaguer parallel process of 'dialogues' with civil society.

THE WORLD TRADE ORGANIZATION'S POWERS

*Governments should interfere in the conduct of trade as little as possible.*¹
— Peter Sutherland, former Director General, GATT

With the conclusion of the Uruguay Round of the GATT negotiations on 15 December 1993, crucial decision-making powers with the potential to impact billions of people were bestowed upon the World Trade Organization. Today, with a membership of over 130 countries, the body's mandate is greatly expanded from that of its predecessor, the General Agreement on Tariffs and Trade (GATT). Moving beyond its historic role of setting tariffs and quotas, the WTO now deals with non-tariff barriers to trade (such as health and environmental standards) as well as every imaginable regulation that might somehow 'distort' or 'obstruct' the free flow of goods and services.

Despite its outwardly democratic appearance due to its policies of equal participation by all member states in consensus-based decision-making, the WTO is extremely undemocratic and opaque. Although developing countries represent the majority of the world's nations and peoples, they have very little say in the negotiation process. Lack of financial and human resources, discussions between the most powerful countries behind closed doors and, most importantly, very strong pressure from the US and the EU often force developing-country governments into accepting deals very much against their interests.

Despite a generous layer of 'feel good' pro-globalisation rhetoric, the goals of the EU's international trade and investment policies remain brutally inflexible. Its policies are propelled by a hunger for unfettered market access for European-based TNCs and the dismantling of local regulations in order to create a so-called global 'level playing field'. A similar logic governs the policies adopted by other major global powers, and the

predominant political blocs have joined forces within the World Trade Organization to dismantle barriers to trade and investment in the less industrialised nations. The EU and the US prepare their common positions bilaterally within the Transatlantic Economic Partnership (TEP) and within the so-called "Quad", comprising the US, the EU, Japan and Canada.

As Josh Karliner observes in *The Corporate Planet*: "To a large degree, the triad of Japan, EU and US can be seen as three large corporate states, at times cooperating, at times competing with one another to promote the interests of their rival transnationals across the globe."²

As the millennium draws to a close, a number of high-profile trade disputes between the EU and the US have placed the WTO's unique implementation powers in the spotlight. The WTO's sharpest teeth are its dispute settlement body and its cross-retaliation provisions, both of which enable it to force nations to comply with WTO rules. The increasing number of controversial rulings in which the WTO dispute settlement body has upheld corporate interests over those of people and the environment has severely tarnished the WTO's image.

Within the WTO system, any member state can complain to the dispute settlement body about any other member's policies or laws that are perceived to restrict the free flow of trade. If the panel—composed of unelected bureaucrats—finds a government guilty of non-compliance with WTO agreements, the offending country must change its legislation or face retaliatory trade sanctions by the complaining party, even in sectors unrelated to the dispute. The offending country may also face heavy financial penalties.

During the first four years of the WTO's existence, the dispute settlement mechanism has been invoked predominantly for disputes between the EU and the US. Its first decisions provide a disturbing picture of what can be expected in the future. During this first four-year period, there were 177 cases in which a country challenged a law or practice of another country by invoking WTO rules. The majority of these cases could have been settled without interference by the WTO's dispute settlement body. Eighteen of the 177 disputes were settled by a binding panel decision, and another 18 are currently being examined by the WTO panels.³

The following two case studies are examples of how the business groupings use the WTO system to pursue their interests at the expense of people and the environment.

• **US Industry's Beef with European Consumers**

In early May 1997, a three-person WTO dispute settlement panel ruled that a nine-year ban imposed by the European Union on hormone-treated beef was illegal under WTO rules. The ruling, which overturned an important consumer health law, caused outrage throughout Europe.

Over the past decade, Monsanto, the US-based TNC which formerly produced chemicals, has restyled itself into a 'life science' corporation, leaning heavily on the manipulation of genetic

material. One of its products is a recombinant bovine growth hormone (rBGH), used by large-scale dairy farmers in the US to increase the milk production of their cows. Other 'natural' hormones such as oestradiol and testosterone are also commonly used by US cattle farmers. In 1995, 90 per cent of US cattle were treated with some type of growth hormone.

In January 1989, the European Union, applying the 'precautionary principle', deemed safety claims by US industry unconvincing and imposed a ban on the import of hormone-treated beef and milk. The ban also applied to producers within the EU. In response to strong lobbying by Monsanto, the US National Cattlemen's Association, the US Dairy Export Council, the National Milk Producers Federation and other interest groups, the then US Trade Representative Mickey Kantor initiated action in the WTO against the EU ban on beef hormones.⁴

On the EU side, industry groups such as FEDESA (the primary lobby organisation for the European animal 'health' products industry) and the European Federation of Pharmaceutical Industry

Associations (EFPIA)—both members of EuropaBio, the primary biotech lobby group in the EU—pressured the Commission to lift the ban, which was affecting European companies as well. In chorus with their US counterparts, they argued that there is always some risk with food involving genetic modification or hormone treatment.

Pressure from consumer protection organisations and other NGOs made the Commission realise that the lifting of its ban on hormone-treated beef and milk was a political hot potato. Supported by a growing body of evidence suggesting that certain natural and synthetic hormones are linked to rising incidences of cancer, the Commission decided not to lift its ban, despite the WTO ruling.

The preliminary decision in the dispute over hormone beef is the first ruling, thus far, based on a three-year-old WTO agreement known as the Sanitary and Phytosanitary Agreement. This agreement requires that restrictions based on food health and safety be based on scientific evidence, and accepts internationally agreed standards, such as those decided within the UN system, as a justification for taking

protective trade measures. Since the UN Food and Agriculture Organization (FAO) deemed the hormones to be safe, the WTO panel ruled that the EU's ban was unjustified and should be lifted.

This ruling sets a dangerous precedent for national consumer health and safety protection laws. Many experts believe that various EU measures, such as those regulating other animal products, may now also be challenged by the US and other nations.⁵ The process of whittling away consumer protection laws and regulations in Europe and elsewhere for the sake of industry will thus continue unabated unless steps are taken to reverse this trend.

• **Massachusetts-Burma Law: Human Rights Overruled**

In the United States, individual states and communities have long expressed their political leanings through the enactment of 'selective purchasing' laws. These laws pressure transnational corporations to cease doing business with repressive regimes by

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imposing 'pricing penalties' on their goods and services. Since 1996, for example, Massachusetts has imposed a 10 per cent penalty on goods and services provided by companies with financial interests in Myanmar. Formerly known as Burma, Myanmar is renowned for the brutal human rights abuses imposed upon citizens by its illegitimate military government. To date, Siemens, Unilever and several Japanese companies are among those that have been penalised by the Massachusetts legislation, and the law was cited as one of the main reasons for Apple Computer's withdrawal from Myanmar.⁶

The Massachusetts-Burma law has come under attack both on the US domestic front and internationally, particularly in the EU and Japan. The National Foreign Trade Council (NFTC), a coalition of some 600 US-based manufacturers and financial institutions, has taken the state of Massachusetts to court over the law.⁷ Oil companies such as Texaco and Mobil have expressed their concern about the impact of such laws on their activities in Myanmar and other dictatorial regimes.

Seeking to distance itself from charges that the NFTC places economic interests above human rights in Myanmar, a front group called USA Engage was set up with the assistance of Anne L. Wexler,⁸ head of the Washington-based Wexler Group consultancy.⁹ USA Engage was officially introduced at an April 1997 press conference, where it portrayed itself as a "broad-based coalition representing Americans from all regions, sectors and segments of our society".¹⁰ The group promptly began an intensive lobbying campaign in Washington, DC, against selective-purchasing laws and other economic sanctions placed on corporations based on social and environmental objectives.

In Europe, European Round Table of Industrialists (ERT) companies, including Ericsson, Unilever and Siemens, also viewed the Massachusetts law as a dangerous precedent to be quickly crushed. Industry mobilised its forces to pressure the European Commission to challenge the US government to drop the Massachusetts law. Failing that strategy, corporations urged the initiation of action in the WTO. Japanese heavyweights such as Mitsubishi, Sony and Nissan—some of the biggest losers in the Massachusetts law—applied the same pressure to the Japanese government.

It thus came as no surprise in October 1998 when the European Union and Japan requested the creation of a WTO dispute panel, arguing that the Massachusetts law was discriminatory and in violation of WTO rules on government procurement. Although the EU suspended the WTO panel in February 1999 (perhaps as a conciliatory move in its bitter banana war with the US government), it has threatened to revive the case if the US federal government does not take action against Massachusetts.

The Massachusetts-Burma case brings up many critical questions about national and local sovereignty and the precedence of trade over social and environmental objectives. It also highlights some of the inequities in the current balance of power within the EU. In September 1998, the European Parliament passed a resolution calling upon the Commission to put an end to all trade, tourism and investment by EU-based companies in Myanmar. The resolution also criticised the Commission's decision to call

for a WTO dispute panel on the Massachusetts law.¹¹ The Commission has also been criticised by the European Trade Union Confederation and the International Confederation of Free Trade Unions for ignoring human rights abuses in Myanmar. Yet, according to an EU spokesman: "Breaking WTO rules doesn't help anyone. The key thing in this case is the United States' failure to honour its international commitments."¹²

TNC INVOLVEMENT IN WTO NEGOTIATIONS

Transnational corporations have thus far been the main beneficiaries of WTO agreements. This is hardly surprising, as in many cases they have directly influenced the positions of the most powerful WTO members during the negotiation of these agreements. This was certainly the case during the Uruguay Round of GATT negotiations, when the bulk of the WTO agreements were shaped.

In addition to bringing Southern countries under the GATT and its discipline, and putting new issues on the trade agenda, the Uruguay Round granted Northern TNCs expanded access to developing-country markets. The seven-year Round, which

began in 1986, helped Northern countries and their corporations to achieve further liberalisation in sectors where they had an advantage (such as in services), and also introduced intellectual property rights and other protections for TNC activities.

The most strenuous lobbying took place in the United States. Not only did individual companies vie for general trade liberalisation and the opening up of markets, but industry coalitions were also created to push for the inclusion of certain issues under the GATT regime. For example, the Coalition of Service Industries lobbied for a new trade regime for services¹³ and the

Intellectual Property Committee worked to get the TRIPs (Trade-Related Aspects of Intellectual Property Rights) agreement on the agenda. Industry influence was also evident in the composition of the US delegation: the vast majority of members were from the corporate world.

During the first years of the Uruguay Round, European business lobby groups were not intensively involved in negotiations. EU industry launched a serious lobbying effort only when negotiations came to a deadlock over the agreement on agriculture. According to former ERT Secretary-General Keith Richardson:

"What we tried to say to governments is: whatever the difficulties are, the most important thing is to get the overall deal, because that will bring benefits to the whole of European business. And the total picture is more important than the individual difficulties. It's quite a difficult message, and the only way you really do it is with face-to-face meetings."¹⁴

While the ERT focused on national governments, UNICE, the European industrial employers confederation, worked closely with the European Commission to bring the negotiations to a close. UNICE analysts chewed all of the proposals over carefully, before spitting industry's positions back to the Commission.

The following two case studies, on the TRIPs and the Financial Services agreements, show in more detail how transnational corporations have worked to shape WTO agreements to their own preferences.

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• **Power TRIPs**

*Industry has identified a major problem in international trade. It crafted a solution, reduced it to a concrete proposal and sold it to our own and other governments... The industries and traders of world commerce have simultaneously played the role of patients, the diagnosticians and the physicians.*¹⁵

— James Enyart, Monsanto

Trade-Related Aspects of Intellectual Property Rights, or TRIPs, grant corporations the right to protect their "intellectual property" in all WTO countries. This forces WTO member states to apply minimum standards in seven areas of intellectual property, including copyright and trademark protection, patents and industrial designs.

The TRIPs agreement is the brainchild of an industry coalition with members from the US, the EU and Japan. The first initiative was taken by the Intellectual Property Committee (IPC), which brings together 13 major US corporations including Bristol Myers Squibb, DuPont, Monsanto and General Motors. The IPC was created with the explicit goal of putting TRIPs firmly on the GATT agenda.¹⁶

According to a former Monsanto employee, one of the IPC's first tasks was 'missionary work' in Europe and Japan in order to gather the support of corporate heavyweights for the TRIPs campaign.¹⁷ UNICE and the Japanese business organisation Keidanren were easy converts.

According to former Pfizer CEO Edmund T. Pratt, who attended numerous GATT negotiations in the capacity of official adviser to the US Trade Representative: "Our combined strength enabled us to establish a global private sector government network which laid the groundwork for what became TRIPs."¹⁸

In 1988, an industry paper on the "Basic Framework for GATT Provisions on Intellectual Property" made it into the Uruguay Round negotiations, following lobby campaigns in Geneva and on the national level. Not surprisingly, the position put forth by the influential US delegation was strikingly similar to industry's proposal.

The fundamental imbalance in the TRIPs agreement is that Southern countries possess very little "intellectual property"; furthermore, they do not possess the resources to develop this sector in the near future. However, they do contain most of the world's biodiversity, from which many pharmaceutical and agricultural patents are derived. Calculations show that up to 80 per cent of patents for technology and products in developing countries are held by TNCs.¹⁹ This imbalance, coupled with concern about the ethical implications of the private ownership of life, prompted some Southern countries to oppose fiercely all forms of life-form patenting during the TRIPs negotiations. The industry-dominated US delegation, with 96 out of the 111 members from the corporate sector,²⁰ called for everything to be patentable, including plants and animals.

The compromise result was a so-called "biodiversity provision" in the TRIPs agreement, which allows countries to exclude plants and animals from patentability under the condition that they develop a similar system of protection (a so-called *sui generis* system). The biodiversity provision is slated for review in 1999,

which has kept the lobby machines working at full speed. The US, now supported by the EU, Canada and Japan, is pressing hard for the expansion of what can be covered under intellectual property rights in the agreement. Southern countries, however, appear determined to stand firm against US and industry pressure, proposing among other things to exclude biodiversity definitively from TRIPs.

Genuinely concerned about the firm stance taken by developing countries, civil society and some international bodies such as the UN Convention on Biodiversity,²¹ industry is joining forces to resist any weakening of its rights under the TRIPs agreement and is lobbying governments not to cave in. If industry has its way, the revised biodiversity article will make it impossible to exclude life-forms from patent law, and developing countries' control over their biological resources will be further weakened. Ethical, socio-economic, cultural and environmental considerations will also be ignored, reducing the patenting of life to merely a matter of commercial interests.

• **Financial Services Agreement: Servicing the North**

*This agreement is like taking back the neighbourhood. We need a policeman on the block. We can't have governments behaving in thuggish ways.*²²

— Gordon Cloney, of the US-based International Insurance Council

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In 1997, three new agreements were signed within the framework of the WTO. One agreement dismantled tariffs on trade in information technology products, and another did the same for the telecommunications sector. In December 1997, a third agreement was signed, on the liberalisation of the financial services sectors, including banking and insurance. All three of these "jewels in the WTO crown", as EU Trade Commissioner Sir Leon Brittan termed them, were the result of

systematic pressure on Southern governments by the European Union and the United States.

According to Brittan: "Europe was already a force for liberalisation in the Uruguay Round negotiations, but, in the sectoral achievements that followed, Europe has unquestionably taken the lead in pushing for greater and faster liberalisation of world markets than any of our partners."²³

The three sectoral agreements were shaped in very close cooperation with European and US corporations. This can clearly be seen in the case of the Financial Services Agreement, highlighted by Brittan as a model for business involvement in future trade negotiations.

This agreement, which entered into force on 1 March 1999, will remove many obstacles for financial services corporations wanting to enter Southern "emerging markets", which until recently had policies in place to protect the domestic banking and insurance sectors. It has been signed by 70 WTO member countries, and it is predicted that it will liberalise over 90 per cent of the world market in insurance, banking and brokerage services.²⁴ The economic interests are obviously enormous. Total global bank assets are estimated at more than US\$41 trillion, while the insurance sector brings in over \$2.1 trillion in premiums, and trade in shares is worth over \$15 trillion per year.²⁵

The Financial Services Agreement does not oblige countries to

open their markets fully from the start; countries may file specific reservations. However, the agreement does 'lock-in' liberalisation and market access, banning new protective measures.

The financial services negotiations were an unsolved leftover from Uruguay Round negotiations on services (GATS). In 1995, negotiations on this sector failed once again when the US withdrew, displeased with the reluctance of Asian and Latin American countries to open their markets to US financial services corporations. Some 60 other countries signed an interim agreement, and negotiations were relaunched in April 1997. The European Commission then took the lead, aware that EU countries had removed almost all internal barriers to foreign trade and investment in the financial services sector over the previous years. As Asian countries were loath to liberalise their financial services sectors further, senior trade officials from the European Commission and the US embarked upon a campaign to make them change their minds. They travelled to Asian capitals and presented financial services liberalisation as the cure for sluggish economies, as it would attract new foreign capital flows.

The third partner in this team effort was, according to the Dutch Ministry of Economic Affairs, "the international financial industry, particularly from the US and the EU, united in the Financial Leaders Group (FLG)".²⁶

The FLG's role was to "identify the barriers to trade in other countries"; the EU and US delegations would then put these obstacles on the negotiating agenda. The group—headed by the largest banks and insurance companies in the world, including Barclays PLC, Chase Manhattan, ING Group, Ford Financial Services Group, the Bank of Tokyo/Mitsubishi, Goldman Sachs and the Royal Bank of Canada—strives for the liberalisation of the financial services sector on a global scale. FLG co-chairmen are Andrew Buxton, head of UK-based Barclays PLC, and Dean O'Hare of the US Chubb Corporation. Other members include the American International Group, British Invisibles, Bank of America, Aegon Insurance Group, Dresdner Bank AG, Citigroup,

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ROBECO Group, UBS and over 50 other banking, investment and insurance companies.

EU Commissioner Brittan stressed that "the close links established between EC and US industry...were an essential factor in obtaining the final deal".²⁷ In fact, he found the cooperation with the FLG to be so inspiring that he wants to use it as a prototype for the future. "Within the EU, we are now considering a private sector involvement in the process of building up our priorities," he said, some months after the deal was finished. "The example of the EU-US Financial Leaders Group—involving a group of business leaders to provide high-level momentum to the negotiations—has been the model for the creation of a new mechanism for Europe. A similar deal will be needed for the next round of services liberalisation negotiations."²⁸ The FLG can certainly count on the full support of the Trade Commissioner in its preparations for the upcoming WTO negotiations on services (including financial services), scheduled to begin in the year 2000.

While banking, securities and insurance corporations based in the EU, US and Japan were jubilant about the signing of the agreement, negotiators from the countries referred to as "emerging markets" were far less enthusiastic. In practice, the benefits are reserved for the Northern corporations which can now enter new markets in Asia, Latin America, Africa and Central and Eastern Europe. The prospect of services companies from the South competing in Northern markets is illusory.

When Southern countries signed on to the agreement, it was in the hope of attracting foreign direct investment and financing. The EU, the US and their financial services corporations argued that the market openings will make the banking and insurance industries in "emerging markets" more efficient by increasing competition. But it is very likely that plentiful jobs will be lost as local banks are swallowed up by Northern financial services corporations with far greater resources. An already inequitable financial cycle will thus be solidified, with profits flowing back to shareholders in the EU, the US and Japan.

Endnotes

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EU TRADE POLICIES AND THE DEMOCRATIC GAP

The accelerated process of European unification has resulted in a fundamental democratic gap, which provides an ideal environment for corporate lobbying. The powers of the European Parliament remain far too limited to compensate for the loss of democratic control created as more and more decision-making power shifts from national capitals to the two highly untransparent EU institutions, the EC and the Council of Ministers.

Decision-making on international trade and investment policies is arguably one of the areas where the EU's democratic gap is most pronounced. Member states have delegated most of their powers upwards, giving the European Commission an agenda-setting role. The Commission negotiates on behalf of the EU member states in bodies like the WTO, and has the exclusive right to undertake new trade initiatives. The bulk of the EU's decisions on trade and investment are made in the powerful "133 Committee" (previously called "113 Committee"), which consists of trade officials from member states and Commission representatives. Only major or controversial issues are brought before the EU foreign trade ministers.²⁹

"The Commission is like a dog on a very long leash," observes Michael Hindley, UK Labour Member of the European Parliament (MEP), and this description is particularly applicable to ultra-free-Trade Commissioner Sir Leon Brittan.³⁰

The European Parliament is informed, but lacks decision-making power on external trade policies. National parliaments fail to exert effective control over their EU trade ministers due to a combination of lack of information and limited awareness about the importance of international trade and investment issues. These critical issues have been treated as mere technical matters for far too long. Happily, thanks to the public uproar about the Multilateral Agreement on Investment (MAI) and the devastating financial crisis, the EU's policies are increasingly coming under scrutiny. Real change, however, will be hard to achieve. It is symptomatic and disturbing that the European Commission remained firmly behind the MAI, even while one government

after the other abandoned the sinking negotiations, pushing for its completion before public opposition spiralled out of control.³¹

During the MAI negotiating session in February 1998, the EC issued a strong warning against passing the April 1998 deadline for the negotiations: "Buying more time will make things more difficult, not easier, as special interest groups everywhere discover the questionable value found in denouncing the MAI for their own purposes which have nothing to do with investment."³²

The EC stressed that a failure of the MAI negotiations would also jeopardise the ultimate goal of an investment agreement in the WTO: "It would be bad for the globalised economy in general. The world would be further away from global investment

rules than ever, and this for a long time, if we in the OECD cannot agree on the first cornerstone."³³ The US, on the other hand, indicated to the other negotiators that it was "not ready to make a deal"; instead, it favoured "a reflection period and intensified bilateral contacts as the best way to make progress".³⁴

The battle was led by powerful EU Trade Commissioner Sir Leon Brittan, who, with his hardline neoliberal political stance, is a real barrier to political change. According to World Trade Organization boss Renato

Ruggiero, Brittan is "one of the most important free-trade advocates of this decade".³⁵ Not even when financial meltdown hit large parts of the global economy did Sir Leon Brittan reconsider the dogmatic recipe of high-speed liberalisation he prescribes for every situation.

About the Authors:

Corporate Europe Observatory is a research and campaign group targeting the threats to democracy, equity, social justice and the environment posed by the economic and political power of corporations and their lobby groups. This edition of *Corporate Europe Observer* (no. 4) is from Belén Balanyá, Ann Doherty, Olivier Hoedeman, Adam Ma'anit and Erik Wesselius. An earlier CEO briefing paper, "MAlgalomania!", about the Multilateral Agreement on Investment (MAI), was published in NEXUS 5/03 and 5/04.

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Continued in the next issue of NEXUS...

Endnotes (cont.)

resources, taking into account the rights of local communities, while TRIPs only gives weight to the rights of corporations.

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Web Resources

Some campaign groups:

- ATTAC: www.attac.org
- Corporate Europe Observatory: www.xs4all.nl/~ceo
- Council of Canadian: www.canadians.org
- Friends of the Earth: www.foe.org
- Focus on the Global South: www.focusweb.org
- Green Group in the European Parliament: www.millennium-round.org
- People's Global Action: www.agp.org
- Public Citizen: www.tradewatch.org
- Third World Network: www.twinside.org.sg
- Transnational Institute: www.worldcom.nl/tni/wto/